



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5
77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590

MAR 06 2013

REPLY TO THE ATTENTION OF:

WC-15J

CERTIFIED MAIL 7009 1680 0000 7678 7161
RETURN RECEIPT REQUESTED

Joseph J. Beno, P.E.
Director of Public Works
City of Lakewood, Ohio
12650 Detroit Avenue
Lakewood, Ohio 44107

Subject: City of Lakewood Administrative Order on Consent to 33 U.S.C. §§ 1318 (a) and
1319(a)
Docket No. V-W-13-AO-10

Dear Mr. Beno:

Protecting water quality is a high priority of the U.S. Environmental Protection Agency. Pollutants such as pathogens discharged to waterways from sanitary sewer overflows (SSOs) and Combined Sewer Overflows (CSOs) contribute to poor water quality and impairment of uses of those waterways.

EPA is issuing this Compliance Order to the City of Lakewood, Ohio pursuant to Sections 308(a) and 309(a) of the Clean Water Act (CWA), 33 U.S.C. §§ 1318(a) and 1319(a). In 2012, representatives of EPA alongside representatives of the City of Lakewood discussed a series of projects that would help aid the city's efforts to reduce CSO activations.

Please send your signed response to the addresses specified in the Order. If you have any questions or concerns, please contact Thomas Mendez of my staff, at (312) 353-8242 or mendez.thomas@epa.gov.

Sincerely,

A handwritten signature in black ink, appearing to read "Tinka G. Hyde".

Tinka G. Hyde
Director, Water Division

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5

In the Matter of:)	DOCKET NO. V-W-13-AO-10
)	
City of Lakewood)	Proceeding Under Sections 308 and 309(a)
Lakewood, Ohio,)	of the Clean Water Act, 33 U.S.C. §§ 1318
)	and 1319(a)
Respondent.)	
_____)	

ADMINISTRATIVE CONSENT ORDER

1. The Director of the Water Division, U.S. Environmental Protection Agency, Region 5, is issuing this Administrative Consent Order (Order) to the City of Lakewood, Ohio (Respondent) under Sections 308 and 309(a) of the Clean Water Act (Act), 33 U.S.C. §§ 1318 and 1319(a).

STATUTORY BACKGROUND

2. Section 301(a) of the Act, 33 U.S.C. § 1311(a), prohibits the discharge of any pollutant by any person except, *inter alia*, in compliance with a National Pollutant Discharge Elimination System (NPDES) permit issued pursuant to Section 402 of the Act, 33 U.S.C. § 1342.
3. Pursuant to Section 402 of the Act, 33 U.S.C. § 1342, the Administrator of EPA may issue an NPDES permit authorizing the discharge of pollutants to navigable waters subject to the terms and conditions of the NPDES permit.
4. EPA has approved the State of Ohio (State) program to issue NPDES permits under Section 402(b) of the Act, 33 U.S.C. § 1342(b). The Ohio Environmental Protection Agency (OEPA) is the NPDES permitting authority for the State.
5. Section 308(a) of the Act, 33 U.S.C. § 1318(a), provides, *inter alia*, that whenever required to carry out the objective of this chapter, the Administrator shall require the owner or operator of any point source to: establish and maintain such records; make such reports; and provide such other information as she may reasonably require.
6. Section 309(a)(3) of the Act, 33 U.S.C. § 1319(a)(3), authorizes the Administrator of EPA to issue a compliance order to or commence a civil action for appropriate relief against any person who the Administrator finds is in violation of, *inter alia*, any permit condition or limitation implementing the Act in an NPDES permit issued by a State.

DEFINITIONS

All terms used, but not defined, in this Order have the meanings provided to them in the Act and EPA regulations promulgated under the Act.

7. "Basement backup" shall mean wastewater backups into buildings that are caused by blockages or flow conditions occurring in the sanitary sewer collection system owned and operated by Respondent and does not include, for the purposes of this Order, backups into basements resulting solely from a private property owner's or operator's private lateral blockage.
8. "Bypass" shall mean the intentional diversion of waste streams from any portion of a treatment facility. For the purposes of this Order, the term "bypass" does not include "sanitary sewer overflow" or "SSO," as defined below.
9. "Combined Sewer System(s)" shall mean portions of your sewer system are designed to convey municipal sewage (domestic, commercial, and industrial wastewater) and stormwater through a single conveyance to the wastewater treatment plant or to combined sewer outfalls.
10. "Combined Sewer Overflow" or "CSO" shall mean an overflow, spill, diversion, or release of wastewater from or caused by your Combined Sewer System(s). This term shall include: (i) discharges to waters of the United States from the Combined Sewer System(s); and (ii) any release of wastewater from the Combined Sewer System(s) to public or private property that does not reach waters of the United States, including Backups
11. "Day" or "days" shall mean calendar day or calendar days. In computing any period of time under this Order, where the last day would fall on a Saturday, Sunday, federal or state holiday, the period runs until the close of the next business day.
12. "Document" shall mean any writings, drawings, graphs, charts, photographs, phone records, electronic mail, facsimile and other data compilations from which information can be obtained, translated if necessary, through detection devices into reasonably usable form. Documents should be produced as they are kept in the usual course of business.
13. "Hydraulic deficiency" shall mean insufficient capacity at certain points in the collection system that may result in SSO, CSO or basement backups.
14. "Infiltration and inflow" or "I/I" shall mean the total quantity of water from both infiltration and inflow without distinguishing the source.
15. "Infiltration" shall mean the water entering a sewer system and service connections from the ground, through such means as, but not limited to: defective pipes, pipe joints, connections or manhole walls. Infiltration does not include, and is distinguished from, inflow.

16. "Inflow" shall mean the water discharged into a sewer system, including service connections; from such sources as, but not limited to: roof leaders; cellar, yard and area drains; foundation drains; cooling water discharges; drains from springs and swampy areas; manhole covers; cross connections from storm sewers and combined sewers; catch basins; storm waters; surface run-off; street wash waters or drainage. Inflow does not include, and is distinguished from, infiltration.
17. "Record" shall mean any recording of information in tangible form. It includes, but is not limited to, in print or electronic form, documents, memoranda, reports, letters, maps, graphs, charts, log books, notes, computer print outs and computer data bases.
18. "Respondent" or "you" or "your" refer to the City of Lakewood, Ohio, and any agents, employees, contractors or other entities that performed work or acted in any way on behalf of, or at the direction of, the City of Lakewood.
19. "Sanitary sewer overflow" or "SSO" shall mean any discharge from the sanitary sewer system prior to reaching the wastewater treatment plant (i.e., publicly owned treatment works).
20. "Sanitary sewer overflow outfall" or "SSO outfall" shall mean the point source from which SSOs are discharged. SSO outfalls include permanently installed overflow structures or pipes that manually or automatically allow a discharge of wastewater (permanent wet weather emergency lift/pump stations) and other discharge locations such as broken sewers or dislodged manhole covers caused by sewer surcharges.
21. "Sanitary sewer system" or "sewer system" shall mean the portion of the wastewater collection system that conveys sanitary wastewater (domestic, commercial and industrial wastewaters).
22. "Sewer shed" shall mean discrete subareas of the collection system, with little or no hydraulic connection to other sewer sheds, for the purpose of flow monitoring and/or modeling purposes.
23. "Sewer sub-basin" shall mean a small (typically containing no more than 20,000 linear feet of sewer) portion of a sewer shed that can be hydraulically characterized by monitoring at a very limited number (often one) locations.

FINDINGS

24. Respondent owns and operates a sanitary sewer system that collects sanitary wastewater from properties located within the City of Lakewood and transports this wastewater for treatment. The City of Lakewood owns and operates a Waste Water Treatment Plant (WWTP) located at 1699 Valley Parkway, Lakewood, Ohio. Waters treated from the WWTP discharge to Lake Erie. Untreated sewage from CSOs enters either the Rocky River or directly discharges into Lake Erie.
25. OEPA issued OEPA Permit No. OH0026018 to the City of Lakewood on August 1, 2007. The City of Lakewood has submitted a new permit application to OEPA.

26. Lakewood's combined sewer system lacks sufficient capacity to transport all of the combined sewage that it receives during storm events to its WWTP for treatment. Lakewood's combined sewer system is designed to allow combined sewage to overflow out of specific CSO outfalls.
27. Respondent is a "municipality," as that term is defined at Section 502(4) of the Act, 33 U.S.C. § 1362(4), and 40 C.F.R. Part 122.2.
28. Respondent is a "person," as that term is defined at Section 502(5) of the Act, 33 U.S.C. § 1362(5), and 40 C.F.R. Part 122.2.
29. The sewage contained in Respondent's sewer system is a "pollutant," as that term is defined in Section 502(6) of the Act, 33 U.S.C. § 1362(6), and 40 C.F.R. § 122.2.
30. The Rocky River and Lake Erie are both "navigable waters" and "waters of the United States," as those terms are defined at Section 502(7) of the Act, 33 U.S.C. § 1362(7), and 40 C.F.R. § 122.2, respectively.
31. The SSO outfalls in Respondent's sanitary sewer system where SSOs occur are "point sources," as that term is defined at Section 502(14) of the Act, 33 U.S.C. § 1362(14), and 40 C.F.R. § 122.2.
32. The SSO are "discharges" and/or "discharges of a pollutant" as those terms are defined at Section 502(12) and (16) of the Act, 33 U.S.C. § 1362(12) and (16), and 40 C.F.R. § 122.2.
33. Discharges of pollutants from point sources into waters of the United States that are not authorized by an NPDES permit or an approved state program are prohibited under Section 301(a) of the Act, 33 U.S.C § 1311(a).
34. Each day of each discharge by Respondent of pollutants from a point source to navigable waters of the United States that was not authorized in an NPDES permit issued by EPA or an approved state program is a separate violation of Section 301(a) of the Act, 33 U.S.C. § 1311(a).

COMPLIANCE REQUIREMENTS

35. Respondent must provide proper signage at all CSO outfalls in which the public may come in contact with waters from CSOs whether visible or not. This signage is to be in place within 30 days of the effective date of this Order.
36. Within 30 days of the effective date of this Order, Respondent shall submit to EPA an Early Action Project Plan (EAPP). The EAPP shall include a detailed description of the projects set forth in Attachment A, as well as any additional proposed projects, setting forth the expected benefits for each project, a schedule for work and a completion date for each project. The EAPP shall include a requirement for a mid-project report at the approximate half way point for each project set forth in the EAPP. The EAPP shall also

require a final report detailing the effectiveness and results of the completed projects set forth in the EAPP. The EAPP shall set out project completion dates no greater than 18 months from the effective date of this Order.

37. Within 30 days of Respondent's submission of the EAPP, EPA shall in writing: a) approve submission; b) approve the submission upon specified conditions; c) approve part of the EAPP and disapprove the remainder; or d) disapprove the EAPP.
38. If the EAPP is approved pursuant to Paragraph 37.a, Lakewood shall take all actions required, in accordance with the schedules and requirements of the EAPP, as approved. If the submission is conditionally approved or approved only in part pursuant to Paragraph 37.b or .c, Lakewood shall, upon written direction of EPA, take all actions required by the approved portion of the EAPP that EPA determines are technically severable from any disapproved portions. If the EAPP is disapproved in whole or in part pursuant to Paragraph 37.c or .d, Lakewood shall, within 60 days or such other time as the Parties agree to in writing, correct all deficiencies and resubmit the EAPP, or disapproved portion thereof, for approval, in accordance with this Paragraph. If the resubmitted EAPP, or portion thereof, is disapproved in whole or in part, EPA may again require Lakewood to correct any deficiencies, in accordance with this Paragraph.
39. Respondent must properly manage, operate and maintain all parts of its sewer system at all times including but not limited to:
 - a. Eliminating all SSOs and basement backups and continuing to monitor for the existence of new SSOs and basement backups for all parts of the sewer system;
 - b. Taking all feasible steps to respond to SSOs and basement backups and to mitigate the impact of SSOs and basement backups from the sewer system; and
40. Respondent will continue and complete the characterization of all parts of its sewer system.
41. If an event occurs that causes or may cause a delay in complying with this Order:
 - a. Respondent must notify EPA in writing within 10 days after learning of an event that caused or may cause a delay in complying with this Order. The notice must describe the anticipated length of the delay, its cause(s), Respondent's past and proposed actions to prevent or minimize the delay and a schedule to carry out those actions. Respondent must take all reasonable actions to avoid or minimize any delay. If Respondent fails to notify EPA according to this paragraph, Respondent will not receive an extension of time to comply with the Order.
 - b. If the parties agree that circumstances beyond the control of Respondent caused or may cause a delay in complying with the Order, the parties will stipulate to an extension of time no longer than the period of delay.
 - c. If EPA does not agree that circumstances beyond the control of Respondent caused or may cause a delay in complying with the Order, EPA will notify Respondent in

writing of its decision and any delays in complying with the Order will not be excused.

- d. Respondent has the burden of proving that circumstances beyond its control caused or may cause a delay in complying with the Order. Increased costs for complying with the Order will not be a basis for an extension of time under subparagraph b, above. Delay in achieving an interim step will not necessarily justify or excuse delay in achieving subsequent steps.

SUBMITTALS

- 42. Respondent must submit all information required by this Order to EPA at this address:

Director, Water Division
Attn: Thomas Mendez
Water Enforcement Compliance Assurance Branch (WC-15J)
U.S. Environmental Protection Agency, Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604

- 43. Respondent must submit all information required by this Order under an authorized signature containing the following certification:

I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate and complete. I am aware that there are significant penalties for submitting false statements and information, including the possibility of fines and imprisonment for knowing violations.

- 44. If the signatory finds at any time after submittal of information that any portion of the submittal is false or incorrect, the signatory must notify EPA immediately. Knowing submittal of false information to EPA in response to this Order may subject Respondent to criminal prosecution under Section 309(c) of the Act, 33 U.S.C. § 1319(c), as well as 18 U.S.C. §§ 1001 and 1341.
- 45. Confidentiality of Submissions: Respondent may assert a claim of business confidentiality under 40 C.F.R. Part 2, Subpart B, for any portion of the information it submits to EPA. Information subject to a business confidentiality claim is available to the public only to the extent allowed by 40 C.F.R. Part 2, Subpart B. If Respondent fails to assert a business confidentiality claim, EPA may make all submitted information available, without further notice, to any member of the public who requests it. Effluent data, as defined in 40 C.F.R. § 2.302(a)(2), and information in permit applications is not

entitled to confidential treatment under 40 C.F.R. Part 2, Subpart B. 40 C.F.R. § 122.7. See also, Attachment D.

46. EPA may use any information submitted in response to this Order in support of an administrative, civil or criminal action against Respondent.

GENERAL PROVISIONS

47. EPA and Respondent recognize that this Order has been negotiated in good faith and that neither consenting to the terms of this Order, nor the actions undertaken by Respondent in accordance with this Order, constitute an admission of liability.
48. Respondent agrees to the terms of this Order and further agrees that it will not contest the basis or validity of this Order.
49. Respondent waives any and all claims for relief and otherwise available rights or remedies to judicial or administrative review which the Respondent may have with respect to any issue of fact or law set forth in this Order on Consent, including, but not limited to, any right of judicial review of the Section 309(a)(3) Compliance Order on Consent under the Administrative Procedure Act, 5 U.S.C. §§ 701-708.
50. Respondent reserves the right to contest any future enforcement activity by EPA against Respondent, including but not limited to any future enforcement activity relating to any future SSO or to alleged noncompliance with this Order.
51. This Order is not a permit under the Act and does not waive or modify Respondent's responsibility to comply with all other applicable federal, state or local laws, regulations, ordinances, permits or licenses.
52. The terms of this Order are binding on Respondent, its assignees and successors. Any change in ownership or corporate status of Respondent including, but not limited to, any transfer of assets or real or personal property shall not alter Respondent's responsibilities under this Order. Respondent must give notice of this Order to any successors in interest prior to transferring ownership and must simultaneously verify to EPA, at the above address, that it has given the notice.
53. The signatories to this Order certify that they are authorized to execute and legally bind the parties they represent.
54. Respondent must ensure that its contractors, subcontractors, and representatives receive a copy of this Order and comply with this Order within 14 days after the Effective Date of this Order or after the date of such retention. Respondent will be responsible for any noncompliance with this Order.
55. EPA reserves all rights and remedies, legal and equitable, available to address any violation cited in this Order and any other violation of the Act, and to enforce this Order. Neither issuance of this Order by EPA nor compliance with its terms precludes further enforcement action pursuant to Section 309 of the Act, 33 U.S.C. § 1319, for the

violations cited in this Order, for any other violations of the Act committed by Respondent, or to enforce this Order.

56. The Act includes provisions for administrative penalties, for civil injunctive relief and penalties, and for criminal sanctions for violations of the Act. Specifically, EPA may:
 - a. Assess civil administrative penalties under 33 U.S.C. § 1319(g) and 40 C.F.R. Part 19 of \$16,000 per day for each violation that occurred after January 12, 2009, up to a total of \$177,500;
 - b. Seek civil injunctive relief and penalties for violations of the Act under 33 U.S.C. § 1319(b) and 40 C.F.R. Part 19. EPA may seek civil judicial penalties of \$37,500 per day for each violation that occurred after January 12, 2009; and
 - c. Seek criminal sanctions, including fines and imprisonment, for negligent or knowing violations of the Act under 33 U.S.C. § 1319(c).
57. The information required to be submitted pursuant to this Order is not subject to the approval requirements of the Paperwork Reduction Act of 1995, 44 U.S.C. § 3501 *et seq.* because it seeks collection of information by an agency from specific individuals or entities as part of an administrative action or investigation.
58. This Order is effective on the date of signature by the Director of the Water Division.

CERTIFICATION OF COMPLETION AND TERMINATION

59. Within 30 days after Respondent concludes that it has complied with all requirements of this Order, Respondent must submit to EPA a written certification of completion describing all actions taken to comply with all requirements of this Order.
60. After receipt and review of Respondent's certification of completion submitted pursuant to Paragraph 58, EPA will notify Respondent whether it has satisfied all requirements of this Order.
61. This Order will terminate when Respondent receives notification from EPA that it has satisfied all requirements of this Order.

Date

Michael P. Summers, Mayor
City of Lakewood
Lakewood, Ohio

Date

Kevin M. Butler, Director of Law
City of Lakewood
Lakewood, Ohio

Date

Tinka G. Hyde
Director
Water Division
U. S. EPA Region 5

Attachment A: Project List

Intersection Streets	Action
Clifton Blvd. at Brockley Avenue	Construct new storm sewer from Cranford to Summit to eliminate combined sewer manhole weir
West Clifton Blvd. at Cannon Avenue	Construct new manhole to separate storm and sanitary sewers
Clifton Blvd. at West Clifton Blvd	Construct new manhole to separate storm and sanitary sewers
Clifton Blvd. at Webb Road	Combined sewer manhole allows sanitary sewer trough to overtop into storm sewer. Enclose system to prevent overtopping.
Summit Avenue at Edgewater Drive	Eliminate overflow pipe from sanitary manhole to storm sewer
City Hall to Thoreau Avenue	Construct new manhole to separate storm and sanitary sewers
Clifton Blvd. in front of Emerson School	Repair suspended leaking pipe in storm sewer manhole that allows sewage to enter the storm sewer system